IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9470 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARAN KHERAJ MANKA

Versus

STATE OF GUJARAT

Appearance:

MRS SUBHADRA G PATEL for Petitioner

MR UDAI R BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 23/11/2000

ORAL JUDGEMENT

1. This petition is filed under Article 226 of the Constitution, challenging the detention order passed by the District Magistrate, Kutch, Bhuj, against the

petitioner on 11th of July, 2000 under the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short) in exercise of power vested upon the District Magistrate by Sec. 3(1) of the said Act. The petitioner was detained in pursuance of said detention order from 17th July, 2000.

2. The fact reveals that in all four offences under Sections 307, 326, etc. affecting human body were registered against the petitioner before Aado Police Station. Three of them registered in 2000 and one in 1999. Considering the papers of the investigations of these crimes and considering the statements of the four witnesses, who on assurance of anonymity of names and addresses, have stated before the Police that the petitioner was a head strong person and was indulging in illegal activity. The detaining authority from the above material, came to the conclusion that the petitioner was a "dangerous person" within the meaning of Sec. 2(c) of the said PASA Act and the order impugned for the detention of the petitioner was passed.

3. Learned Advocate Mrs. Subhadraben Patel for the petitioner and learned AGP Mr. Udai R. Bhatt were heard.

4. The detention order has been challenged on many grounds. With regard to the rival contentions and on scrutiny of the record, it appears that this petition can be disposed of on one ground alone. The detaining authority, however, failed to consider less drastic remedy available to the detaining authority. Learned advocate for the petitioner made a statement that the petitioner was on bail in three of the offences registered against him and was in judicial custody in one of the offences at the time of serving of the detention order. She further makes a statement that in one of the crimes registered against the petitioner, he is still not released on bail.

5. In ZUBEDABIBI RASIDKHAN PATHAN vs. STATE OF GUJARAT, reported in 1995 (2) GLR 1134, Division Bench of this Court ruled that the detaining authority must consider the less drastic remedy. In that case, it was held that the order of detention was vitiated because the detaining authority did not consider the cancellation of bail of the detenu under Section 437(5) of the Cr.P.C. This view is fortified again by the Division Bench of this Court in the Letters Patent Appeal No. 1056 of 1999, which is decided on 15th of September, 1999.

6. In this case also, the Detaining Authority,

failed to consider the less drastic remedy of cancellation of bail available to the detaining authority. The detention order impugned is required to be set aside on this ground alone because the same reveals non-application of mind. The detaining authority also failed to consider the fact that in one of the offences registered against the petitioner, he was in judicial custody and was not capable of continuing his illegal activities nor the detaining authority considered to resort to less drastic remedy of cancellation of bail under Section 437(5) of the Cr.P.C.

7. In this view of the matter, the detention order dated 11th July, 2000 passed by respondent No.2 District Magistrate, Katch at Bhuj, against the petitioner is hereby ordered to be quashed and set aside. Petitioner Naran Kheraj Manka, is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule is made absolute. D.S. permitted.

(J.R. Vora, J.)

p.n.nair